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JAMES N. HATTEN, Clerk
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNIVERSAL STEEL, INC., in its capacity as fiduciary of the Universal Steel, Inc. Employee Health Benefit Plan,	)	
Plaintiff,	)	Civil Action No.
v.	)	1:17-CV-1057
ABELARDO LEMAS, individually and CRUZ & ASSOCIATES, P.C.,	)	
Defendants.	)	

VERIFIED COMPLAINT

COMES NOW, Universal Steel, Inc. (sometimes hereinafter "Universal Steel"), in its capacity as fiduciary of the Universal Steel, Inc. Employee Health Benefit Plan, and files this Complaint against the defendants, showing the Court as follows.

BACKGROUND

1.

This is an action under section 502(a)(3) of the Employee Retirement Income Security Act of 1974 (hereinafter "ERISA"), 29 U.S.C. §1132(a)(3) for equitable relief to remedy violations of the Universal Steel, Inc. Employee Health Benefit Plan (sometimes hereinafter referred to as the "Plan"), which is an employee welfare benefit plan within the meaning of 3(a) of ERISA, 29 U.S.C. §

1002(1). A true and accurate copy of Universal Steel, Inc. Employee Health Benefit Plan is attached hereto and incorporated herein by reference as Exhibit "A".

2.

The Plan has paid benefits on behalf of Abelardo Lemas for injuries he sustained in an automobile accident. The Plan seeks equitable relief in the form of a constructive trust and/or equitable lien upon amounts held by Abelardo Lemas and/or Cruz & Associates, P.C. that belong to the Plan.

PARTIES, JURISDICTION AND VENUE

3.

Plaintiff re-alleges and incorporates herein by reference the allegations of paragraphs 1 through 2 of its Complaint as if each paragraph were fully set forth verbatim herein.

4.

The Court has the exclusive subject matter jurisdiction over this action, pursuant to 29 U.S.C. § 1132(e)(1).

5.

Venue in this Court is proper, pursuant to 29 U.S.C. § 1132(e)(2), because the Plan is administered within this district.

6.

Universal Steel, Inc., brings this Complaint against the Defendants to enforce the terms of the Universal Steel, Inc. Employee Health Benefit Plan in its capacity as fiduciary of the Plan.

7.

Universal Steel, Inc. is the named fiduciary and plan administrator of the Plan, as that term is defined in 29 U.S.C. §§ 1002(16)(A) and 1102(a)(2), respectively.

8.

Plaintiff is authorized to bring this action under 29 U.S.C. § 1132(a)(3) and federal common law to enforce the terms of and to protect the assets of the Plan.

9.

For the periods of time relevant to this Complaint, Abelardo Lemas was a covered person under the Plan and is an adult citizen of the State of Georgia who may be served at 2838 Cascade Drive, Gainsville, GA 30504.

10.

Cruz & Associates, P.C. is a Georgia domestic professional corporation and law firm that represents Abelardo Lemas. It is a Georgia resident and may be personally served c/o Ruben J. Cruz at 3025 Piedmont Road, Suite 200, Atlanta, GA 30305. This defendant is a necessary party to this litigation as it is a trustee of the Abelardo Lemas settlement funds, and is named as a defendant to ensure that full relief may be granted in accordance with the prayer for relief.

FACTUAL ALLEGATIONS

11.

Plaintiff re-alleges and incorporates herein by reference the allegations of paragraphs 1 through 10 of the Complaint as if each paragraph were fully set forth verbatim herein.

12.

At all times relevant to this Complaint, Abelardo Lemas was a participant and covered person under the terms of the Plan.

13.

On or around October 16, 2014, Abelardo Lemas sustained injuries as a result of an automobile accident.

14.

Abelardo Lemas brought a claim against the adverse parties for the damages sustained as a result of the October 16, 2014 automobile accident.

15.

The Plan has paid medical expenses in the amount of $34,110.04 on behalf of Abelardo Lemas for injuries he sustained as a result of the automobile accident, and seeks to recover these monies from the defendants to the extent they have recovered monies from the parties responsible for Abelardo Lemas' injuries.

16.

On behalf of the Plan, Chris Aguiar of The Phia Group placed defendants on notice of the Plan's right to recover the monies paid on behalf of Abelardo Lemas. See, Ex. 1 at ¶¶ 10-11.

17.

The subrogation and reimbursement provisions of the Plan provide for a first priority lien without reduction for attorneys' fees, costs, or expenses, stating in full:

> **"SUBROGATION AND REIMBURSEMENT**
>
> **WHEN THIS PROVISION APPLIES.** You or your Dependent(s) (hereinafter "beneficiary") may incur medical expenses because of Illness or Injuries for which benefits are paid by the Plan but which were caused by another party. The beneficiary may therefore have a claim against the other party for payment of the medical expenses incurred. In these instances, the Plan has no duty or obligation to pay claims related to this Illness or Injury. However, if the Plan chooses to pay benefits, it has both a right of Subrogation and a right of Reimbursement. Each right is separate and the waiver of one right by the Plan shall not be deemed to waive the other right. Under the Plan's right of Subrogation, the Plan is subrogated to all of the rights the beneficiary may have against that other party. This right of Subrogation also applies when a beneficiary has a right to recover under an uninsured or underinsured motorist's plan, homeowner's plan, renter's plan, or any other insurance policy under which the beneficiary is insured. The Plan also retains a right of first lien against any monies received by the beneficiary from the other person. Any monies received by a beneficiary or his attorney to which this Plan has a right of Subrogation or Reimbursement shall be held in trust for the benefit of the Plan. Under this right of Reimbursement, the beneficiary will be required to reimburse the Plan out of any monies the beneficiary receives from the other person or on behalf of the other person as a result of judgment, settlement, or otherwise, without regard as to whether the recovery has been apportioned between medical and other damages, and without regard as to whether full or complete recovery of damages has occurred. The Plan specifically rejects the "make-whole doctrine" and the "common-fund doctrine" with respect to its rights of Subrogation and Reimbursement. The Plan will not be responsible for

expenses or attorney's fees incurred by a beneficiary in connection with any recovery. Accordingly, beneficiaries must pay their own legal fees. Furthermore, the Plan is subrogated to attorney's fees and expenses in enforcing its rights.

The beneficiary may be required to execute a Subrogation Reimbursement Agreement and/or a Trust Agreement to receive benefits under the Plan. Failure to execute these documents upon request by the Plan Administrator may result in the non-payment of any related Claims. Further, if the beneficiary fails to return signed copies of these documents within the time period specified by the Plan Administrator, the Plan may refuse to pay Claims incurred with respect to the Illness or Injury from the date of your Injury or Illness through the date the Plan Administrator receives the signed documents. If the documents are received after the deadline established by the Plan Administrator, the Plan will pay eligible Claims incurred subsequent to its receipt of the signed documents.

Notwithstanding the foregoing, even if the Plan chooses not to have the beneficiary execute a Subrogation Reimbursement Agreement or the beneficiary fails to return a signed Subrogation Reimbursement Agreement, and the Plan pays any claims on behalf of the beneficiary and the beneficiary accepts payment of the claims, (I) the Plan will not be considered to have waived its right to pursue Subrogation and/or Reimbursement with respect to any claims it pays on behalf of the beneficiary, (2) the beneficiary will be deemed to have accepted the terms of the Plan, including the Subrogation and Reimbursement provisions described in this section, and (3) the beneficiary will be deemed to agree to maintain any payment received from another party in a constructive trust.

AMOUNT SUBJECT TO SUBROGATION OR REIMBURSEMENT. In no case will the amount subject to Subrogation or Reimbursement exceed the amount of medical benefits paid for the Illness or Injuries under the Plan.

The beneficiary is required to provide information and assistance including testimony or the execution of documents to enforce the Plan's rights of Subrogation and Reimbursement. In addition, the beneficiary must notify the Plan Administrator of any action, judgment, settlement or other recovery for which the Plan has rights of Subrogation and Reimbursement. Further, the beneficiary will do nothing to prejudice the right of the Plan to Subrogation or Reimbursement. The Plan also reserves the right to initiate an action in the name of the Plan or in the name of the beneficiary to recover the Plan's subrogation and/or reimbursement interest.

The beneficiary shall be entitled to recover payment for benefits under the Plan only once. In the event a beneficiary becomes entitled to recovery from the Plan

> Sponsor for a work-related Illness or Injury, and the amount of such recovery includes amounts for medical benefits previously paid by the Plan, the Plan Sponsor shall be entitled to offset the amount of such recovery by the amount of benefits previously paid by the Plan.
>
> **DEFINED TERMS**
>
> I) **"Recovery"** means monies paid to the beneficiary by way of judgment, settlement, claim, or otherwise by the other party to compensate for the Illness or Injuries sustained;
> 2) **"Subrogation"** means the Plan's right to pursue the beneficiary's Claims for medical charges against the other party and to be compensated in accordance with appropriate laws and regulations; and
> 3) **"Reimbursement"** means repayment or reimbursement to the Plan of medical benefits that it has paid toward care and treatment of the beneficiary's Illness or Injuries.
>
> **RIGHTS OF RECOVERY.** Whenever payments have been made by the Plan with respect to allowable expenses in excess of the maximum amount of payment necessary to satisfy the intent of this Plan, the Plan shall have the right, exercisable alone and in its sole discretion, to recover such excess payments."

See, Plan at pp. 47-48, attached as Exhibit A to Exhibit 1.

18.

Though the defendants have settled claims against the parties liable for Defendant Abelardo Lemas' injuries for an amount of $100,000.00, they have refused to honor the Plan's first priority reimbursement claim. See, Ex. 1 at ¶¶ 12-13.

19.

Defendant Cruz & Associates has represented that it is in receipt of the settlement funds, and has threatened to disburse the funds to its client, defendant Abelardo Lemas, whom it has alleged to be judgment proof. See, Ex. 1 at ¶ 12.

COUNT I - CLAIMS FOR RELIEF UNDER 29 U.S.C. § 1132(a)(3)

20.

Plaintiff incorporates herein by reference the allegations of paragraphs 1 through 19 of the plaintiff's Complaint as if each paragraph were fully set forth verbatim herein.

21.

The Plan has a right to reimbursement of medical expenses it paid on behalf of Abelardo Lemas from any and all settlement funds received from parties responsible for his injuries up to the sum of $34,110.04.

22.

Upon information and belief, the defendants are in possession of funds to which they are not entitled, and that belong in good conscience to the Plan. See, Ex. 1 at ¶ 12.

23.

Although the plaintiff has requested that the defendants reimburse the Plan, the defendants have refused to turn over the portion of the settlement funds as required by the terms of the Plan. Defendants' refusal violates the terms of the

Plan and ERISA. Plaintiff is entitled to a constructive trust or equitable lien with respect to the disputed funds controlled by the defendants, plus accrued interest.

24.

As a result of defendants' violation of the terms of the Plan, the Plan has sustained damages. Plaintiff Universal Steel, Inc., in its capacity as fiduciary of the Plan, therefore seek all appropriate equitable relief, pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), to enforce the terms of the Plan, including but not limited to:

a) The imposition of an in rem constructive trust or equitable lien in favor of the Plan upon the settlement proceeds in the possession of the defendants, in the amount of $34,110.04, plus accrued interest;

b) An order that the settlement funds in the amount of $34,110.04 are owned by and belong to the Plan; and

c) An order directing defendants to turn over the settlement proceeds in the amount of $34,110.04, plus accrued interest, to the Plan.

COUNT II - TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

25.

Plaintiff incorporates herein by reference the allegations of paragraphs 1 through 24 of the plaintiff's Complaint as if each paragraph were fully set forth verbatim herein.

26.

Defendant Cruz & Associates has been representing Defendant Abelardo Lemas in connection with the damages he sustained in the October 16, 2014 vehicular collision. See, Ex. 1 at ¶ 9.

27.

Though the defendants have been placed on notice of the Plan's claim, and that the Plan is a self-funded ERISA plan, the defendants have refused to honor the Plan's first priority reimbursement claim. See, Ex. 1 at ¶¶ 10, 13.

28.

Defendant Cruz & Associates has threatened to disburse the funds, and has stated that his client is "judgment proof." See, Ex. 1 at ¶ 14.

29.

Because of the defendants' representations, there is a substantial likelihood that the defendants will dispose of or deplete the settlement funds before they reimburse the Plan. See, Ex. 1 at ¶ 15.

30.

The Plan will suffer irreparable harm if the defendants are not enjoined from disposing of or depleting the settlement funds. See, Ex. 1 at ¶ 16.

31.

Plaintiff believes that if defendants are given notice of any hearing on plaintiff's request for a Temporary Restraining Order, defendants will disburse, use, transfer or dissipate some or all of the settlement funds that belong to the Plan prior to the hearing, thereby frustrating the very purpose of this request for injunctive relief. See, Ex. 1 at ¶ 18.

32.

There is a substantial likelihood that plaintiff will prevail on the merits, as the language in the Plan is unambiguous and clear as to the Plan's right to be reimbursed from the settlement proceeds. See, affidavit of John V. Kuruvilla at ¶ 11, attached hereto and incorporated herein by reference as Exhibit "2". See also, supra at p. 5.

33.

Plaintiff requests an ex parte temporary restraining order of brief scope and limited duration, for the sole purpose of preserving the status quo and preventing irreparable harm, and that the Court set a hearing to be attended by all parties on whether additional injunctive relief is warranted.

COUNT III - ATTORNEYS' FEES AND COSTS

34.

Plaintiff re-alleges and incorporates herein by reference the allegations of paragraphs 1 through 33 of the Plaintiff's Complaint as if each paragraph were fully set forth verbatim herein.

35.

Plaintiff seeks its attorneys' fees and costs, pursuant to 29 U.S.C. §1132(g).

PRAYER FOR RELIEF

WHEREFORE, plaintiff, Universal Steel, Inc., in its capacity as fiduciary of the Universal Steel, Inc. Employee Health Benefit Plan, requests the following:

a) The imposition of an in rem constructive trust or equitable lien in favor of the Plan upon the settlement proceeds in the possession of the defendants and/or their attorneys, agents or representatives, in the amount of $34,110.04, plus accrued interest;

b) An order that the settlement funds in the amount of $34,110.04 are owned by and belong to the Plan;

c) An order directing defendants to turn over the settlement proceeds in the amount of $34,110.04, plus accrued interest, to the Plan;

d) Enter a temporary restraining order against the defendants to prevent them from disbursing, disposing, dissipating and/or transferring the settlement proceeds;

e) Set a hearing on plaintiff's request for injunctive relief for the purpose of determining whether defendants should be enjoined from disbursing, disposing, dissipating and/or transferring the settlement proceeds during the pendency of this action;

f) Other and further equitable relief to which the plaintiff may be entitled, which may be necessary for the defendants to comply with their obligations under the terms of the Plan;

g) Awarding plaintiff Universal Steel, Inc., in its capacity as fiduciary of the Universal Steel, Inc. Employee Health Benefit Plan pre- and post-judgment interest, costs, attorneys' fees, and expenses of litigation; and

h) Any other relief as this Court may deem just and proper.

This 23rd day of March, 2017.

John V. Kuruvilla
Georgia Bar No. 903278
Counsel for plaintiff Universal Steel, Inc.

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VERIFICATION

COMES NOW, Christopher M. Aguiar, a competent person of full age of majority, declare as follows:

I am employed by The Phia Group, LLC ("Phia"), which represents Universal Steel, Inc. for purposes of pursuing subrogation and reimbursement claims. I have personal knowledge of the fact and exhibits set forth in the Verified Complaint, or those facts are based on records maintained by Phia in the regular course of its business. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Christopher M. Aguiar